

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 22-5055

INHANCE TECHNOLOGIES LLC,

Defendant.

Notice of EPA's Issuance of Orders After Review of Inhance's Significant New Use Notices

Plaintiff the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), submits this notice to inform the Court that today, December 1, 2023, EPA took final action on the Significant New Use Notices (“SNUNs”) that Defendant Inhance Technologies LLC (“Inhance”) submitted to the agency. EPA issued two orders that, collectively, prohibit Inhance from manufacturing the nine species of long-chain PFAS at issue in this case for the significant new use specified in Inhance’s SNUNs.¹ Also, EPA extended the review period for Inhance’s SNUNs to February 28, 2024. Pursuant to Sections 5(e)(1)(A) and 5(f)(3)(A) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2604(e)(1)(A) and (f)(3)(A), the orders will take effect on the expiration of the review period.

¹ Namely: (1) perfluorooctanoic acid (“PFOA”), (2) perfluorononanoic acid (“PFNA”), (3) perfluorodecanoic acid (“PFDA”), (4) perfluoroundecanoic acid (“PFUdA”), (5) perfluorododecanoic acid (“PFDoA”), (6) perfluorotridecanoic acid (“PFTrDA”), (7) perfluorotetradecanoic acid (“PFTeDA”), (8) perfluorohexadecanoic acid (“PFHxDA”), and (9) perfluorostearic acid (“PFODA”).

On August 23, 2023, the Court held oral argument on pending motions to dismiss and for summary judgment.² At the conclusion of the hearing, the Court asked to be informed “if there are any developments on the regulatory front” and of “the significance of [such] development.” Transcript of Oral Argument at 115:7-15.

Accordingly, the United States has filed several previous notices advising of suspensions of the SNUN review period. ECF Nos. 56, 63-67.³ The last notice stated that the SNUN review period was scheduled to expire on November 30, 2023. ECF No. 67.

This notice advises that, on December 1, 2023, EPA issued two separate orders concerning Inhance’s SNUNs. Together, these orders prohibit Inhance from manufacturing the nine species of long-chain PFAS that were the subject of Inhance’s SNUNs for the significant new uses specified in those SNUNs.⁴

A. EPA’s Orders Prohibit Inhance from Manufacturing Long-Chain PFAS for the Significant New Use.

EPA issued the first of the two orders under Section 5(e) of TSCA, 15 U.S.C. § 2604(e). As relevant here, that provision applies when EPA determines that, in the absence of sufficient information to permit the agency to make a reasoned evaluation of the health and environmental effects of a chemical substance, the manufacture of such substance may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk

² Those motions and corresponding filings are as follows: (1) Inhance’s motion to dismiss the United States’ complaint (ECF Nos. 10, 25, 27); (2) Inhance’s motion to dismiss the Intervenor-Plaintiffs’ complaint (ECF Nos. 40, 41, 46); (3) the United States’ motion for partial summary judgment ECF Nos. 37, 49, 51, 52, 54); the Intervenor-Plaintiffs’ judgment and injunctive relief (ECF Nos. 42, 50, 51, 53, 54).

³ The United States and Inhance jointly filed the first such notice. ECF No. 56.

⁴ EPA is reviewing the orders to determine whether they contain any confidential business information under TSCA. See 15 U.S.C. § 2613. Once this review is complete, the United States will provide the Court with (a) redacted (to the extent necessary) copies of the orders and if necessary, (b) unredacted copies after moving to file such under seal.

factors. When EPA makes such a determination, Section 5(e) requires EPA to issue an order to prohibit or limit the manufacture of a chemical substance “to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors.” *Id.*

EPA made the determination described above with respect to the following six species of long-chain PFAS: (1) PFUdA acid, (2) PFDoA, (3) PFTrDA, (4) PFTeDA, (5) PFHxDA, and (6) PFODA. Based on its risk determination and its assessment of the measures needed to protect against unreasonable risks to health or the environment, EPA’s Section 5(e) order prohibits Inhance from manufacturing these species of long-chain PFAS for the significant new use specified in Inhance’s SNUNs.

EPA issued the second order under Section 5(f) of TSCA, 15 U.S.C. § 2604(f). That provision is triggered when EPA determines that a significant new use of a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors. When EPA makes such a determination, Section 5(f) authorizes the agency to issue an order to prohibit or limit the manufacture of the chemical substance that is the subject of the significant new use “to the extent necessary to protect against” the unreasonable risk. *Id.* § 2604(f)(1).

EPA determined that Inhance’s significant new use of the following three species of long-chain PFAS present an unreasonable risk of injury to health or the environment: (1) PFOA, (2) PFNA, and (3) PFDA. Given this determination and EPA’s assessment of the actions necessary to protect against such unreasonable risks, EPA’s Section 5(f) order prohibits Inhance from manufacturing these species of long-chain PFAS for the significant new use specified in Inhance’s SNUNs.

B. EPA Extended the SNUN Review Period to February 28, 2023, and the Orders Take Effect on the Expiration of the Review Period.

Section 5(c) of TSCA, 15 U.S.C. § 2604(c), authorizes EPA to extend the SNUN review period by up to 90 days. Under this authority, on November 28, 2023, EPA extended the review period for each of Inhance’s nine SNUNs to February 28, 2024, i.e., 90 days from November 30, 2023, which was the previous SNUN review deadline. 88 Fed. Reg. 83941-42 (Dec. 1, 2023). Under Sections 5(e) and (f) of TSCA, any orders issued under those provisions “take effect on the expiration of the applicable review period.” 15 U.S.C. § 2604(e), (f). Because the review periods for Inhance’s SNUNs were extended to February 28, 2024, EPA’s two orders on Inhance’s SNUNs—issued under Sections 5(e) and (f), respectively—will take effect upon the expiration of the extension period.

C. Inhance’s Appeal Rights.

Under Section 19(a)(1)(A) of TSCA, 15 U.S.C. § 2618(a)(1)(A), “no later than 60 days after the date on which . . . an order under section” 5 of the statute is issued, “any person may file a petition for judicial review of such . . . order with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person’s principal place of business is located.”⁵

Respectfully submitted,

Dated: December 1, 2023

FOR THE UNITED STATES OF AMERICA

TODD KIM
Assistant Attorney General

⁵ Section 19(a)(1)(A) of TSCA further provides: “Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule or order if any district court of the United States would have had jurisdiction of such action but for this subparagraph.”

Environment and Natural Resources Division
United States Department of Justice

/s/ Richard Gladstein

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CERTIFICATE OF SERVICE

The foregoing notice has been filed electronically using the ECF system and is available for viewing and downloading from the ECF system. Counsel for the Plaintiff also has served by email an electronic copy of this notice on counsel for Defendant and counsel for Intervenor-Plaintiffs Center for Environmental Health, Public Employees for Environmental Responsibility, and Mr. Jay De La Rosa.

DATE: December 1, 2023

/s/ Richard Gladstein
RICHARD GLADSTEIN